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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/930,601	08/14/2001	Mark Manuel	199-003	1765

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Law Offices of John Chupa and Associates, P.C.  
28535 Orchard Lake Road  
Suite 50  
Farmington Hills, MI 48334

EXAMINER

HECKENBERG JR, DONALD H

ART UNIT	PAPER NUMBER
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1722

DATE MAILED: 04/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/930,601

Applicant(s)

MANUEL, MARK

Examiner

Donald Heckenberg

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 January 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 19-23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12, 14-18 and 24 is/are rejected.
- 7) ☒ Claim(s) 13 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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1. This application contains claims 19-23 drawn to an invention nonelected without traverse in the response filed May 27, 2003. A complete reply to the final rejection must include cancelation of nonelected claims or other appropriate action (37 CFR 1.144). MPEP § 821.01.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-11 are rejected under 35 U.S.C. 102(e) as being anticipated by Bak et al. (U.S. Pat. App. Pub. No. 2002/0175265; previously of record).

Bak discloses a molding tool with cooling passages. As shown in figures 6A & 6B, the tool comprises first and second sectional members (B1 and B2) which are coupled together to form the tool (see figure 6A). The first and second members have

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identical first and second indented channels aligned with one another to form cooling passages (C1, C2, and C3). Bak further discloses a configuration of the apparatus wherein the cooling channels terminate with the tool (see figures 9A and 9B and ¶ 85, ll. 1-6).

It is noted that claims 6-11 are in product by process format. The determination of patentability in product by process claims is based on the product itself. The patentability of a product does not depend on its method of production. In re Thorpe, 777 F.2d 695, 227 USPQ 964 (Fed. Cir. 1985); In re Brown, 459 F.2d 531, 173 USPQ 685 (CCPA 1972); In re Pilkington, 411 F.2d 1345, 162 USPQ 145 (CCPA 1969); see also MPEP § 2113. In the instant case, as described above Bak discloses a tool with all of the structural features recited in the claims of the instant application. Accordingly, Bak anticipates the product of process claims of the instant application.

4. Claims 12 and 15-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Vandergrift (U.S. Pat. No. 1,539,887; previously of record).

Vandergrift discloses a molding tool. The molding tool comprises a first member (2) and a second member (3). Spacer

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members (3, 4, 5, 6, and 7) are coupled and attached to the first and second members to form a cooling passages (8). Some of the spacer members (3 and 4) interlock with other members (6 and 7), thereby making the first and second sections stationary with respect to one another (p. 1, ll. 87-94). In such an arrangement, the spacer members are thus also attached to both the first and second members.

As noted above in the rejection of claims under 102(e) anticipation by Bak, the determination of patentability in product by process claims is based on the product itself. As Vandergrift discloses all of the product-structural limitations of claims 15-18, the reference anticipates these claims.

5. Claim 14 is rejected under 35 U.S.C. 102(b) as being anticipated by Miller (U.S. Pat. No. 3,416,766).

Miller discloses a molding tool. As shown in figure 2, the tool comprises a first member (5), with the first member comprising grooves and a sectioned member surrounding the grooves (see fig. 2). The tool further comprises a second member (4) which is coupled to the first member. The second member has flat face which overlays the groove thereby forming a cooling passage (6 and 7). The second member is held stationary with respect to the first member by bolts (13).

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6. Claim 24 is rejected under 35 U.S.C. 102(b) as being anticipated by Takahashi (U.S. Pat. No. 5,792,492).

Takahashi discloses an optical disk molding tool. The tool comprises a first sectional member (48) and cooperating a second sectional member (39). The at first sectional member has a first portion and the second sectional member has a second portion which align and cooperate with each other to form a passage (40) within the tool. The first and second sectional members when aligned are coupled together using bolts (53).

7. Applicant's arguments filed October 9, 2003 and January 20, 2004 have been fully considered but they are not persuasive.

The 37 CFR 1.131 declaration is insufficient to show possession of the claimed invention prior to the 35 U.S.C. 102(e) date of the Bak reference. A 37 CFR 1.131 affidavit or declaration must establish possession of either the whole invention or something falling with the claim (such as a species of a claimed genus), in the sense that the claim as a whole reads on it. In re Tamczyn, 347 F.2d 830, 146 USPQ 298 (CCPA 1965); MPEP 715.02. In the instant case, both claims 1 and 6 of the instant application require the tool to comprise cooling passages. Nothing in the submitted declaration refers to

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cooling passages. Moreover, claims 1 and 6 both require the alignment of portions of first and second sectional members. None of the figures submitted in the declaration show the alignment of portions of the sectional members. At most, the figures appear to show two sectional members with a gap formed therebetween by a spacer. While these figures may show some of the embodiment recited in other claims of the application (for example claim 12 reciting the use of spacers), they do not show a configuration with aligned portions, nor show passages for cooling mechanisms as required in claims 1 and 11 of the instant application.

With respect to the rejection of claim 12, Applicant argues that Vandergrift does not disclose a stationary laminate arrangement.

The claims do not recite a "laminate" structure, thus this is not relevant to the issue of patentability. As described above, Vandergrift's apparatus is such that the first and second members to be stationary with respect to one another do to the interlocking of the spacer members (p. 1, ll. 87-94).

Applicant's argument seems to imply that the claims are more limited to some type of structure wherein the first and second member are integrally bonded together. However, none of the

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language recited in the claims of the instant application requires such an arrangement.

With respect to claim 14, Applicant argues that Miller does not disclose a spacer arrangement. Yet claim 14 does not recite or require a spacer structure. Miller anticipates all of the structural features defined in claim 14 as described above.

8. Claim 13 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. See the reasons for indicating allowable subject matter in the previous Office Action.

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, THIS ACTION IS MADE FINAL. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened



statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Donald Heckenberg whose telephone number is (571) 272-1131. The examiner can normally be reached on Monday through Friday from 9:30 A.M. to 6:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker, can be reached at (571) 272-1151. The official fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.


Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system,

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see <<<http://pair-direct.uspto.gov>>>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).



Donald Heckenberg  
March 29, 2004



ROBERT DAVIS  
PRIMARY EXAMINER  
GROUP-1300 / 200

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